

## SUBCHAPTER I—SOLID WASTES

### PART 239—REQUIREMENTS FOR STATE PERMIT PROGRAM DETER- MINATION OF ADEQUACY

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AUTHORITY: 42 U.S.C. 6912, 6945.

SOURCE: 63 FR 57040, Oct. 23, 1998, unless otherwise noted.

#### Subpart A—General

##### § 239.1 Purpose.

This part specifies the requirements that state permit programs must meet to be determined adequate by the EPA under section 4005(c)(1)(C) of the Resource Conservation and Recovery Act (RCRA or the Act) and the procedures EPA will follow in determining the adequacy of state Subtitle D permit programs or other systems of prior approval and conditions required to be adopted and implemented by states under RCRA section 4005(c)(1)(B).

##### § 239.2 Scope and definitions.

(a) *Scope.* (1) Nothing in this part precludes a state from adopting or enforcing requirements that are more stringent or more extensive than those required under this part or from operating a permit program or other system of prior approval and conditions with more stringent requirements or a broader scope of coverage than that required under this part.

(2) All states which develop and implement a Subtitle D permit program must submit an application for an adequacy determination for purposes of this part. Except as provided in § 239.12, state Subtitle D permit programs which received full approval prior to November 23, 1998 need not submit new applications for approval under this part. Similarly, except as provided in § 239.12, states that received partial approval of their Subtitle D permit programs prior to November 23, 1998 need not reapply under this part for approval for those program elements EPA has already determined to be adequate.

(3) If EPA determines that a state Subtitle D permit program is inadequate, EPA will have the authority to enforce the Subtitle D federal revised criteria on the RCRA section 4010(c) regulated facilities under the state's jurisdiction.

(b) *Definitions.* (1) For purposes of this part:

*Administrator* means the Administrator of the U.S. Environmental Protection Agency or any authorized representative.

*Approved permit program* or *approved program* means a state Subtitle D permit program or other system of prior approval and conditions required under section 4005(c)(1)(B) of RCRA that has been determined to be adequate by EPA under this part.

*Approved state* means a state whose Subtitle D permit program or other system of prior approval and conditions required under section 4005(c)(1)(B) of RCRA has been determined to be adequate by EPA under this part.

## Environmental Protection Agency

## § 239.4

*Guidance* means policy memorandum, an application for approval under this Part, or other technical or policy documents that supplement state laws and regulations. These documents provide direction with regard to how state agencies should interpret their permit program requirements and must be consistent with state laws and regulations.

*Implementing agency* means the state and/or local agency(ies) responsible for carrying out an approved state permit program.

*Lead state agency* means the state agency which has the legal authority and oversight responsibilities to implement the permit program or other system of prior approval and conditions to ensure that facilities regulated under section 4010(c) of Subtitle D of RCRA comply with the requirements of the approved state permit program and/or has been designated as lead agency.

*Permit or prior approval and conditions* means any authorization, license, or equivalent control document issued under the authority of the state regulating the location, design, operation, ground-water monitoring, closure, post-closure care, corrective action, and financial assurance of Subtitle D regulated facilities.

*Permit documents* means permit applications, draft and final permits, or other documents that include applicable design and management conditions in accordance with the Subtitle D federal revised criteria, found at 40 CFR part 257, subpart B and 40 CFR part 258, and the technical and administrative information used to explain the basis of permit conditions.

*Regional Administrator* means any one of the ten Regional Administrators of the U.S. Environmental Protection Agency or any authorized representative.

*State Director* means the chief administrative officer of the lead state agency responsible for implementing the state permit program for Subtitle D regulated facilities.

*State program or permit program* means all the authorities, activities, and procedures that comprise the state's system of prior approval and conditions for regulating the location, design, operation, ground-water monitoring, clo-

sure, post-closure care, corrective action, and financial assurance of Subtitle D regulated facilities.

*Subtitle D regulated facilities* means all solid waste disposal facilities subject to the revised criteria promulgated by EPA under the authority of RCRA Section 4010(c).

(c) The definitions in 40 CFR part 257, subpart B and 40 CFR part 258 apply to all subparts of this part.

### Subpart B—State Program Application

#### § 239.3 Components of program application.

Any state that seeks a determination of adequacy under this part must submit an application to the Regional Administrator in the appropriate EPA Region. The application must identify the scope of the program for which the state is seeking approval (i.e., which class of Subtitle D regulated facilities are covered by the application). The application also must demonstrate that the state's authorities and procedures are adequate to ensure compliance with the relevant Subtitle D federal revised criteria and that its permit program is uniformly applicable to all the relevant Subtitle D regulated facilities within the state's jurisdiction. The application must contain the following parts:

(a) A transmittal letter, signed by the State Director, requesting program approval. If more than one state agency has implementation responsibilities, the transmittal letter must designate a lead agency and be jointly signed by all state agencies with implementation responsibilities or by the State Governor;

(b) A narrative description of the state permit program in accordance with § 239.4;

(c) A legal certification in accordance with § 239.5;

(d) Copies of all applicable state statutes, regulations, and guidance.

#### § 239.4 Narrative description of state permit program.

The description of a state's program must include:

(a) An explanation of the jurisdiction and responsibilities of all state agencies and local agencies implementing